

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NICHOLAS RASHAD ASHFORD,

Defendant-Appellant.

UNPUBLISHED

April 24, 2012

No. 303863

Washtenaw Circuit Court

LC No. 10-000924-FH

Before: WILDER, P.J., and O'CONNELL and WHITBECK, JJ.

PER CURIAM.

Defendant Nicholas Ashford appeals as of right his bench trial conviction for carrying a concealed weapon.¹ The trial court sentenced Ashford to serve 24 months of probation. We affirm.

I. FACTS

The trial court did not conduct an evidentiary hearing on Ashford's motion to suppress the evidence in this case. Instead, the trial court relied on the preliminary examination transcript and the stipulation of the parties.² As a result, the following facts are derived from the preliminary examination testimony that the trial court considered in deciding Ashford's motion.

On May 27, 2010, Officer David Ried, who had been a road patrol officer in Ann Arbor, Michigan for over ten years, and his partner, Officer Shane Dennis, were dispatched to the 800 block of South Maple Road in response to reports that approximately 100 people were fighting and that at least one person had a gun.³ Officer Ried was familiar with the neighborhood, having

¹ MCL 750.227.

² See *People v Armendarez*, 188 Mich App 61, 66; 468 NW2d 893 (1991) (stating that "[w]here a sufficiently complete stipulation of facts is made, the trial court may decide a motion to suppress on the basis of the stipulation without conducting an independent hearing").

³ Although Officer Ried testified that at least one person was reported to have a gun, it was stipulated that Officer Dennis would have testified that five subjects said they had guns. This distinction does not affect the analysis.

responded to frequent reports of trouble in the area, with the most recent call being a report of shots fired. Officer Ried was aware that the housing complex at the address was a city housing project and that there was a strict policy that nonresidents were not allowed to loiter in the complex.

When the officers arrived, they observed some people milling about in the area, and there was a group of four men in the center courtyard of the housing complex. The officers did not see anyone arguing or fighting, and they did not see anyone with a gun. After the officers got out of their patrol car and approached the courtyard, the four men immediately began walking westward, away from the courtyard and away from the approaching officers. The officers followed the men, who were walking at a brisk pace that was "not running but not walking slowly either." Officer Ried described the pace as faster than a normal walk and stated that "it wasn't a run but it was, appeared they didn't want to be anywhere around where we were gonna be." When asked what about the men's conduct made him suspicious, Officer Ried testified that it was "[j]ust the fact that everybody else stayed when I approached and they wanted to leave." When the men reached the western edge of the complex, they rounded the corner and headed northbound. The men continued walking along the western edge of the western-most building, staying very close to the building and looking back at the officers as they walked. Officer Ried told the men to stop because he wanted to talk to them. The men continued walking, and Officer Ried followed. Officer Ried testified at the preliminary examination about what happened next:

They started to round, they started to make another turn which I found suspicious that they were changing their direction once again as we were getting closer. They were now heading eastbound on the same building. So they were basically just doing a lap around the building. I told them to stop again as the, as I rounded the corner going eastbound also three of 'em stopped and immediately said we didn't have anything to do with it. They both kinda, they all kinda threw their hands up, we have nothing to do with what's going on here.

After the other three men stopped, the fourth man, who Officer Ried identified as Ashford, continued walking and rounded a third corner. Ashford was walking toward the area where the officers first observed him, as if he was going to lap the building. Officer Ried followed Ashford. Officer Reid testified that when he walked around the corner and saw Ashford, Ashford "was kinda like frantically looking, almost looking like, to me it looked, appeared like he wanted to get rid of something or it was almost a look of panic like he was looking all over the place in front of these townhouses." Officer Ried testified that Ashford's arms were up and that Ashford was looking back and forth, like he was searching.

During cross-examination, Officer Ried was questioned further, as follows:

Q. Okay. Were you aware at that time of what Mr. Ashford could possibly be wanting to hide?

A. No, I, no, I didn't know exactly what he was doing.

Q. Would you agree that it could have been anything?

A. Sure.

Q. Illegal or not illegal?

A. Mm, that's not what I would have thought but—

Q. But you would agree that it's possible that Mr. Ashford could have been attempting to hide something that, as opposed to being illegal, could have been embarrassing for instance?

A. Mm, I'd guess you'd have to specify what that would be, 'cause I don't, I wouldn't have thought that, no.

Officer Ried testified that he then told Ashford to come back and join the other three men, and Ashford complied. After Ashford walked back to where the other men were, Officer Ried asked the men if any of them lived in the complex, and all of them, including Ashford, indicated that they did not live there. Officer Ried then conducted a pat-down search of all four men and discovered a loaded, semi-automatic, Smith and Wesson, nine-millimeter handgun in Ashford's waistband.

At the conclusion of Officer Ried's preliminary examination testimony, defense counsel challenged the constitutionality of the search of Ashford, arguing that Officer Ried did not articulate more than a suspicious hunch based on nothing more than the fact that the men walked away as the officers approached. The trial court found that Officer Ried articulated facts that, under the totality of the circumstances, justified the pat-down search of Ashford. The trial court summed up these facts as follows:

So now he's [Officer Ried's] got a dispatch involving people fighting, a person possibly with a gun. He's got four subjects who are walking away but not just walking down the middle of a sidewalk, they're walking around an apartment complex, they're walking around a building. So in the Officer's mind, I think it's reasonable for an Officer to assume that they are getting away from where the police are at. They're changing direction on a couple of occasions. Now he's got [Ashford] continuing on after the other three stop and get around a corner where [Ashford] is gonna be out of the visual sight of the Officer for even a brief period of time. Now we have the Officer coming around the corner, seeing [Ashford] making furtive movements looking in panic like he was trying to get rid of something and now we know that [Ashford] does not live in that area so why would it be that this gentleman would be attempting to circle and make a lap around an apartment complex building where he had no apparent reason at least in so far as the Officer knew for being in that particular area.

Ashford moved to quash the bindover or suppress the evidence obtained during the pat-down of Ashford. But the trial court denied Ashford's motion, and subsequently convicted him of carrying a concealed weapon. Ashford now appeals.

II. MOTION TO SUPPRESS

A. STANDARD OF REVIEW

Ashford argues that the trial court erred in denying his motion to suppress the evidence of a loaded nine-millimeter handgun discovered during Officer Ried's pat-down search. This Court reviews de novo a trial court's determination regarding whether reasonable suspicion supported a search.⁴ However, this Court reviews for clear error a trial court's findings of historical fact, and it should give due weight to the inferences that the trial court and law enforcement officers draw from the facts.⁵

B. APPLICABLE LEGAL PRINCIPLES

Both the United States and Michigan Constitutions guarantee the right to be free from unreasonable searches and seizures.⁶ Warrantless searches and seizures are per se unreasonable unless they fall within one of several specifically established exceptions.⁷ One of these exceptions allows police officers who possess a reasonable suspicion that crime is afoot to make a brief investigatory stop to confirm or dispel that suspicion.⁸ An officer must determine whether there was reasonable suspicion on a case by case basis looking to the totality of the circumstances, and he or she must base that determination on facts, common sense, and inferences about human behavior that give rise to a particularized suspicion of criminal activity.⁹ If the officer has reasonable suspicion that the person stopped is armed and poses a threat to the officer's safety, the officer may perform a limited pat-down search for weapons.¹⁰

C. ANALYSIS

Here, Officer Ried, who had over ten years of experience, indicated that the area was a high crime area; he was frequently dispatched to the area to respond to reports of trouble, most recently for a report of shots fired. When the police officers arrived, Ashford and three other men were observed at the location of the reported fight. When the officers got out of their patrol car and approached, Ashford and his companions immediately began walking briskly away from

⁴ *Ornelas v United States*, 517 US 690, 691; 116 S Ct 1657; 134 L Ed 2d 911 (1996).

⁵ *Id.* at 699.

⁶ US Const, Am IV; Const 1963, art 1, § 11; *People v Champion*, 452 Mich 92, 97; 549 NW2d 849 (1996).

⁷ *Champion*, 452 Mich at 98, citing *Katz v United States*, 389 US 347, 357; 88 S Ct 507; 19 L Ed 2d 576 (1967).

⁸ *Minnesota v Dickerson*, 508 US 366, 373; 113 S Ct 2130; 124 L Ed 2d 334 (1993), citing *Terry v Ohio*, 392 US 1, 30; 88 S Ct 1868; 20 L Ed 2d 889 (1968).

⁹ *People v Jenkins*, 472 Mich 26, 32; 691 NW2d 759 (2005).

¹⁰ *Champion*, 452 Mich at 99.

the officers, looking back as they walked. The men followed an unusual route around one of the apartment buildings, changing direction twice. The men appeared to be circling the building, and they continued walking after Officer Ried told them to stop. When Officer Ried told the men to stop a second time, Ashford's three companions stopped, but Ashford continued walking, rounding another corner out of the sight. Officer Ried followed Ashford around the corner. When Officer Ried turned the corner and saw Ashford, Ashford appeared to be frantic, his arms were up, and he was looking back and forth, as if he wanted to get rid of something. Officer Ried then instructed Ashford to stop and to rejoin the other three men, and Ashford complied.

The totality of the circumstances in this case provided reasonable suspicion that Ashford was engaged in criminal activity and was armed and dangerous. Evidence of Ashford's presence at the scene of the reported shooting, in a high crime area, coupled with his unprovoked flight from uniformed officers, gave rise to reasonable suspicion.¹¹ And the evidence supports Officer Ried's reasonable inference that Ashford was attempting to flee from the police. Nervous gestures and suspicious movements are factors that contribute to a reasonable suspicion of criminal activity.¹²

It was not until Ashford submitted to Officer Ried's authority and complied with the command to stop and to rejoin the other three men that Ashford was seized for Fourth Amendment purposes.¹³ The report of shots fired, Ashford's presence at the location of the reported shots, the fact that the location was a high crime area, Ashford's unprovoked flight from the officers, and Ashford's nervous and suspicious behavior provided the officers with reasonable suspicion that Ashford was engaged in criminal activity. These factors, combined with the report that a gun was openly displayed and fired in public, further provided the officers with reasonable suspicion that Ashford may be armed and dangerous, and the pat-down search of Ashford was justified to protect the safety of the officers.¹⁴ Accordingly, we conclude that the trial court did not err in denying Ashford's motion to suppress the evidence obtained as a result of the search and seizure.

We disagree with Ashford's apparent argument that there was no reasonable suspicion because the 911 caller's report lacked sufficient indicia of reliability. "Even when an investigatory stop is based, at least in part, on information from an informant, the critical inquiry

¹¹ See *Illinois v. Wardlow*, 528 US 119, 124-125; 120 S Ct 673; 145 L Ed 2d 570 (2000); *People v. Oliver*, 464 Mich 184, 197, 200-201; 627 NW2d 297 (2001).

¹² See *People v. Muro*, 197 Mich App 745, 748; 496 NW2d 401 (1993).

¹³ See *People v. Lewis*, 199 Mich App 556, 559; 502 NW2d 363 (1993), citing *California v. Hodari D.*, 499 US 621, 626; 111 S Ct 1547; 113 L Ed 2d 690 (1991) ("[T]o constitute a seizure for purposes of the Fourth Amendment there must be either the application of physical force or the submission by the suspect to an officer's show of authority.").

¹⁴ See *People v. Tooks*, 403 Mich 568, 581; 271 NW2d 503 (1978) (holding that "[b]ecause the action of stopping and frisking is taken for police safety, when the officers have information that a weapon is present a stronger case is made for stopping and frisking").

remains whether the officer's suspicion was reasonable when considered in light of the totality of circumstances."¹⁵ Here, under the totality of the circumstances, Ashford's unprovoked flight from police in a high crime area, coupled with his furtive behavior, provided the officers with reasonable suspicion to stop and search Ashford.¹⁶

We affirm.

/s/ Kurtis T. Wilder

/s/ Peter D. O'Connell

/s/ William C. Whitbeck

¹⁵ *People v Dunbar*, 264 Mich App 240, 248; 690 NW2d 476 (2004), overruled on other grounds *People v Jackson*, 483 Mich 271; 769 NW2d 630 (2009).

¹⁶ See *Wardlow*, 528 US at 124-125.